

A-6



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,215	02/19/2004	James A. McClain	030900	5338
41835	7590	11/28/2005		
KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP HENRY W. OLIVER BUILDING 535 SMITHFIELD STREET PITTSBURGH, PA 15222			EXAMINER WARD, PAUL V	
			ART UNIT 1623	PAPER NUMBER

DATE MAILED: 11/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/782,215	Applicant(s) MCCLAIN, JAMES A.	
	Examiner PAUL V. WARD	Art Unit 1623	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

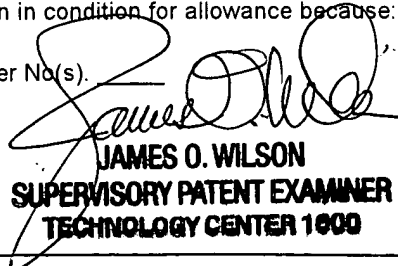
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☒ Applicant's reply has overcome the following rejection(s): 102 rejection by Okhuma.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-27.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
 13. ☐ Other: _____


JAMES O. WILSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

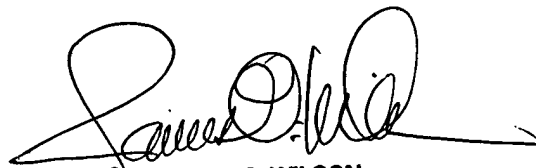
35 U.S.C. 103

Ohkuma teaches a method for producing a resistant starch by (1) selecting a reaction temperature, (2) acidifying the starch, (3) heating the acidified starch to the reaction temperature, and (4) maintaining the acidified starch close to the reaction temperature to avoid coloring. (See Abstract and col. 1, lines 6-10). In column 6, line 41, Ohkuma teaches that HCl is used to acidify the starch. Additionally, in column 23, line 37, Ohkuma emphasizes that the whiteness decreased in inverse proportion to the heating temperature or heating time, and figures 2 and 3 demonstrate, from a comparative analysis, that the degree of coloration at pH 4.5 is lower than the degree in a reaction at pH 6.5. Further, in Table 13, Ohkuma discloses a whiteness level ranging from 12.3 to 66. (See Example 4). Still further, Ohkuma states, in column 6, line 66, that the reaction temperature is 120-200 C, and "more preferably 140-180 C", and in Example 5, column 31, Ohkuma employs a starch having a moisture content of 5%. Moreover, Ohkuma teaches that the resistant starch recovered is in an increased amount of at least 60%. (See column 5, line 7-10).

Ohkuma does not teach acidifying the starch with chlorine or monochloroacetic acid (Ohkuma uses HCl) nor a whiteness level above 66.

Bulfer discloses a resistant starch having a whiteness level of 80-90% using chlorine gas at an optimum pH of 2.7 and having the reaction temperature range of 94-177. (See col. 1 line 22-35, and col. 2-col. 3). In column 1, lines 28-35, Bulfer teaches that when using the chlorine gas, the products are improved in "whiteness". The pH of the starch is 2.7 and the reaction temperature varies between 94oC and 149oC. Thus, it is clear that the technical features, such as pH, temperature, time and whiteness, provides the same advantages as Applicant. (See col. 2-col. 3).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the methods Ohkuma to produce resistant starch by including a chlorine gas as a means to generate whiteness as suggested by Bulfer with a reasonable expectation of success. The motivation to do so is provided by Ohkuma to produce resistant starch and the teaching of Bulfer who teach the usefulness of including a chlorine gas to improve whiteness. Thus, the combined references teach and suggest all of the claim limitations. Therefore, the claimed invention as a whole is obvious over the combined teachings of the prior art. Applicant's claims are obvious, and thus, the rejection of the claims under 35 U.S.C. 103 is maintained for the reasons of record as set forth today and in the Office Action dated July 17, 2005.



JAMES O. WILSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1000